

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S  
APPENDIX**



# 74-1429

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**United States Court of Appeals**  
**FOR THE SECOND CIRCUIT**

**Docket No. 74-1429**

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**UNITED STATES OF AMERICA,**

*Appellee,*

*—against—*

**CLARENCE JACKSON,**

*Appellant.*

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**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

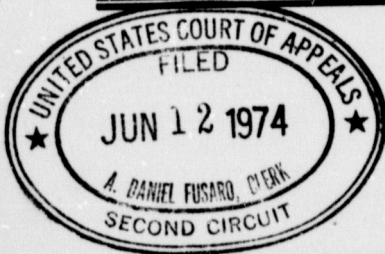
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**GOVERNMENT'S APPENDIX**

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**DAVID G. TRAGER,**  
*United States Attorney,  
Eastern District of New York.*

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# United States District Court

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

*Appellee,*

—against—

CLARENCE JACKSON,

*Appellant.*

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## Docket Entries

*Date*

*Proceedings*

1-10-73—Before Rosling J—Indictment filed ordered sealed by the Court.

1-11-73—Before Mishler, Ch J—Case called—Sealed indictment ordered opened by the Court.

1-11-73—Before ROSLING, J.—Case called—Deft and his atty present—Deft brought into the courtroom on a Bench Warrant issued—Deft arraigned and enters a plea of not guilty—Court fixed bail for \$2500.00 Cash or surety—Deft to post bond by 4:00 p.m. on 1-12-73—Case marked ready for trial.

1-11-73—Bench Warrant ret'd and filed./Executed.

1-16-73—Notice of Readiness for trial filed.

1-17-73—Magistrate's file 73 M 49 inserted into CR file.



*Docket Entries*

- 1-26-73—Notice of Motion filed re: dismissal of indictment (ret. on date which Judge sets)—Memo in support of this Motion filed.
- 2-9 -73—Before ROSLING, J.—Case called—Adjd to 2/16/73 at 2:15 A.M.
- 2-16-73—Before ROSLING, J.—Case marked—Deft present, but his atty is actually engaged—Adjd to 3-2-73 at 2:15 P.M.
- 3-2 -73—Before ROSLING, J.—Case called—Deft and his atty present—Hearing held and concluded—Court reserved decision.
- 3-3 -73—By ROSLING, J.—Order filed that the deft's motion for reduction of sentence.
- 5-2 -73—Before BARTELS, J.—Case called—Counsel present—Trial set down for 7-9-73.
- 9-5 -73—Before BARTELS, J.—Case called—Adjd to 9-11-73.
- 9-10-73—Petition for Writ of Habeas Corpus Ad Testificandum filed.
- 9-10-73—By BARTELS J—Writ Issued ret. 9-11-73.
- 9-26-73—Writ ret'd and filed—Executed.
- 10-9 -73—Govt's requests to Charge filed.
- 10-15-73—Govts Requests to Charge; Govts Memorandum as to materiality of Deft Roma's testimony; Govts Memo on request for Judicial Notice etc.; Govts Memo of Law as to materiality of defts



*Docket Entries**Date**Proceedings*

testimony; Govts Memorandum as to materiality of deft Jackson's testimony filed; Govts Memo of Law on Issue of use of prior convictions to impeach defts testimony; Govts Memo of Law filed on admission of evidence of other acts to prove defts knowledge of matters he claimed to have no recollection etc. all filed.

10-18-73—Copy of letter to Jeffrey Hoffman, Esq. from Harry Batchelder, Special Asst US Attorney, advising the Jackson matter is now scheduled for trial before Judge Bartels on Nov. 13, 1973.

11-13-73—Before BARTELS, J.—Case called—Deft and counsel not present—Govt ready for trial—Jeffrey C. Hoffman is ordered fined \$1,000.00 for contempt and recommendation will be made to Board of Judges that he be dropped from roll of attorneys authorized to practice in the Eastern District of New York—Bench warrant ordered as to deft Jackson—Trial set down for 12-26-73.

11-13-73—Bench warrant issued.

11-14-73—Before BARTELS, J.—Case called—Deft and counsel present—Trial rescheduled to 12-27-73 at 10:00 A.M.—Bail contd (warrant ret'd)—Hearing on contempt re: J. Hoffman, esq. adjd without date.

11-14-73—Bench warrant ret'd and filed—Executed.

11-15-73—Writ ret'd and filed—To be issued for 12-27-73.

11-16-73—Bench Warrant ret'd and filed—Executed.

*Docket Entries*

- | <i>Date</i> | <i>Proceedings</i>   |
|-------------|--|
| 11-16-73    | —Before Bartels J.—case called—hearing begun—counsel J. Hoffman presented By Order of the court counsel Jeffrey Hoffman is fined \$1,000 for contempt. May be framed as bill of costs—Order to be submitted—Proposals of Nov. 13, 1973 made by court to be dropped and no further sanctions levied.                    |
| 11-16-73    | —2 stenographers transcripts filed, one dated Nov. 13 and one dated Nov. 14, 1973.   |
| 11-19-73    | —By BARTELS J—Order filed that Jeffrey C. Hoffman, Esq. of the firm of Lenefsky, Gallina, Mass, Berne & Hoffman, attorneys at law, pay \$1,000.00 as Court costs in the case of United States v. Clarence Jackson. Said payment to be made within seven (7) days after the date this this Order is filed. (p/c mailed) |
| 11-20-73    | —Received from Jeffrey C. Hoffman, esq. \$1,000.00   |
| 11-23-73    | —Bench warrant retd and filed—Executed   |
| 11-26-73    | —One stenographers transcript dated Nov. 16, 1973 filed  |
| 12-26-73    | —Petition for Writ of Habeas Corpus Ad Testificandum filed (T. WILLIAMS)   |
| 12-27-73    | —Before BARTELS, J.—Case called—Deft and counsel present—Trial on and begun—Jurors selected and sworn—Govt rests—Deft rests—Deft motion to strike count 3 of the indictment denied—Deft's motion to dismiss on the grounds that alleged perjury was not wilful denied—Trial contd to 12-28-73 at 10:30 A.M.            |



*Docket Entries*

| <i>Date</i> | <i>Proceedings</i>  |
|-------------|---|
| 12-28-73    | —Before BARTELS, J.—Case called—Deft and counsel present—Trial resumed. Judge charges Jury—Jury retires—Jury returns with a verdict of guilty. Deft's motion to set aside the verdict denied—Bail contd—Trial concluded               |
| 1-3 -74     | —Writ ret'd and filed—Not executed (T. WIL-<br>LIAMS)   |
| 1-3 -74     | —Writ ret'd and filed—Executed (JACKSON)  |
| 1-3 -74     | —Deft's supplemental memorandum as to materi-<br>ality of deft Jackson's Testimony filed  |
| 1-8 -74     | —By BARTELS J—Order filed denying motion for<br>dismissal etc. (deft JACKSON)   |
| 3-22-74     | —Before BARTELS J—case called—deft & counsel<br>J. Hoffman present—sentencing adj'd to 3-29-74/   |
| 3-29-74     | —Before BARTELS, J.—Case called—Deft and<br>counsel present—Deft is sentenced to 3 years im-<br>prisonment—At the direction of the court Grand<br>Jury minutes are marked for identification for<br>purposes of appeal—Bail continued |
| 3-29-74     | —Judgment and Commitment filed—certified copies<br>to Marshal   |
| 3-29-74     | —Notice of Appeal filed.  |

*Docket Entries*

| <i>Date</i> | <i>Proceedings</i>  |
|-------------|---|
| 3-29-74     | Docket entries and duplicate of Notice mailed to the Court of Appeals together with Form A. |
| 4-12-74     | Stenographers Transcripts dated 12-27-73. 12-28-74 filed                                    |
| 4-15-74     | Order received from court of appeals and filed that record be docketed on or before 4-18-74 |
| 4-17-74     | Record on Appeal certified and mailed to the Court of Appeals.                              |
| 4-19-74     | Acknowledgment received from C of A for receipt of Record on Appeal.                        |
| 5-14-74     | Stenographers transcript filed dated Mar. 29, 1974.   |

**Indictment**

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Cr. No. ....

(T. 18 U.S.C. § 1623)

73 Cr. 51

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UNITED STATES OF AMERICA

—against—

CLARENCE JACKSON,

*Defendant.*

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THE GRAND JURY CHARGES:

1. On or about the 13th day of December 1972, within the Eastern District of New York, the defendant Clarence Jackson, while under oath in a proceeding before a Grand Jury of the United States of America, duly impanelled and sworn in the United States District Court for the Eastern District of New York, unlawfully, wilfully and knowingly did make a false material declaration.

2. At the time and place aforesaid, the Grand Jury was conducting an investigation to determine whether there had been committed in the Eastern District of New York, and elsewhere violations of the laws of the United States, to wit: the Comprehensive Drug Abuse Prevention and Control Act of 1970, Title 21 United States Code, Sections 801-966 and other laws.

*Indictment*

3. During the aforesaid proceeding, it was a material matter for the Grand Jury to determine, among other things, whether the defendant Clarence Jackson ever offered to sell heroin to anyone.

4. At the time and place aforesaid, the defendant Clarence Jackson appeared as a witness before the Grand Jury and then and there, while under oath, made false material declarations with regard to the aforesaid material matters as follows:

Q. Did you first meet with them at the Flash Inn on McCombe Ave?

A. No. I did not.

Q. Are you saying that on that day, on May 24, 1972, you never met with anybody and discussed with anybody the sale of heroin in the Flash Inn?

A. No, I did not.

Q. Are you very sure of that?

A. I'm positive of that.

Q. Did you ever meet with Teddy or anyone else and discussed the sale of a kilo of heroin in the Flash Inn?

A. No, not that I can remember. I met them in the park and just took the money.

Q. Did you ever say to Teddy that the kilo was coming straight from the Italians and that you could handle any amount of drugs that Teddy or the undercover wanted to purchase, the other party wanted to purchase?

A. Not that I could remember.

Q. Did you ever at any time meet with anybody at the Flash Inn on the evening of May 24, 1972?

A. No, not that I can remember.



*Indictment*

Q. Did you ever agree to pay for the drinks that the people at the Flash Inn had on the evening of the 24th of May after you had discussions for the sale of drugs?

A. No, I don't remember that.

Q. Did you ever discuss with anybody on the evening of May 24th in the men's room of the Flash Inn the sale of a kilo of heroin?

A. Not that I remember. No, not that I remember.

Q. Did you ever discuss with anybody in the Flash Inn that evening whether they wanted the whole key or only half a key or what?

A. No, not that I can remember. All I remember is just getting the money from them.

Q. You remember no negotiations for the money on the Flash Inn on the evening of the 24th?

A. No, I don't.

\* \* \* \* \*

Q. And you never discussed the sale of drugs in the Flash Inn on May of this year with anybody?

A. No, not that I can remember.

Q. Did you ever negotiate with Teddy or another person in the Flash Inn?

A. I don't remember.

Q. Did you ever negotiate for the sale of a kilo in the Flash Inn in May, May 24, 1972?

A. I don't remember.

Q. Did you ever negotiate for the sale of a kilo for \$27,500 in the Flash in May of this year?

A. I don't remember.

*Indictment*

Q. Wouldn't you remember something like that now?

A. I remember them going to the park, that's all.

5. The aforesaid testimony of the defendant Clarence Jackson, as he then and there well knew and believed was not true in that on or about the 24th day of May 1972, the defendant Clarence Jackson met and negotiated for the sale of a kilogram of heroin with an undercover officer of the New York City Police Department in the Flash Inn.

(Title 18 United States Code § 1623.)

A TRUE BILL.

LILLIAN COLE  
Foreman.

/s/ ROBERT A. MORSE /GLH  
United States Attorney



## AFFIDAVIT OF MAILING

STATE OF NEW YORK  
COUNTY OF KINGS  
EASTERN DISTRICT OF NEW YORK, ss:

DEBORAH J. AMUNDSEN, being duly sworn, says that on the 11th day of June 1974, I deposited in Mail Chute Drop for mailing in the U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and State of New York, a page proof copy of the brief and appendix of the appellee of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper directed to the person hereinafter named, at the place and address stated below:

Lenefsky, Gallina, Mass & Hoffman  
30 Broad Street  
New York, New York 10004

Sworn to before me this  
11th day of June 1974

*Sylvia E. Morris*  
SYLVIA E. MORRIS  
Notary Public, State of New York  
No. 24-4503861  
Qualified in Kings County  
Commission Expires March 30, 1975

*Deborah J. Amundsen*  
DEBORAH J. AMUNDSEN